

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1319 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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PRAVIN MANUBHAI JAYASWAL

Versus

STATE OF GUJARAT

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Appearance:

MS SUBHADRA G PATEL for Petitioner

MR JOSHI, AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 18/11/1999

ORAL JUDGEMENT

1. The Commissioner of Police, Vadodara city passed an order on 6th February 1999 in exercise of powers under sub-section [1] of section 3 of the Gujarat [Prevention of Anti Social Activities] Act, 1985 [ hereinafter for short 'the PASA' Act] against the present petitioner Pravin Manubhai Jayswal detaining him under the provisions of the said Act on the ground that he is a bootlegger involved in number of offences and is used to

using force and intimidation for facilitating his activities of bootlegging and that the members of public are not prepared to lodge a complaint against him in respect of his such activities out of fear. The detaining authority recorded subjective satisfaction on this count and also on the count that other less drastic measures like getting the bail cancelled etc. of preventing the petitioner from engaging in such activities are not possible to be taken. The detaining authority considered the statements of witnesses who affirmed about involvement of the petitioner in bootlegging and behaving in a manner which would disturb public order and ultimately, passed the order of detention.

2. The petitioner challenges the order of detention by preferring this petition under Article 226 of the Constitution of India. The petitioner raised many grounds to assail the impugned order.

3. Mrs. Patel, learned Advocate appearing for the petitioner has drawn attention of this Court to the fact that, in the last offence registered against the petitioner vide Prohibition Case No. 508/98 u/s 66[b], 65[a] & [e] and section 81 of the Bombay Prohibition Act, the petitioner was released on bail on 12/12/1998. The statements of witnesses came to be recorded on 29th, 30th and 31st January 1999. Proposal for detention was made on 6th February 1999 and the detention order came to be passed on that very day. It was, therefore, urged that there was no time-lag in between sufficient enough for the detaining authority to arrive at a subjective satisfaction for exercising powers u/s 9[2] of the PASA Act. The subjective satisfaction of the detaining authority, therefore, would be vitiated in light of the decision in the case of Kalidas Chandubhai Kahar v/s State of Gujarat & ors. [1993[2] GLR 1659].

4. Mr. Joshi, learned AGP has opposed this petition. He submitted that the authorities have acted in a very vigilant manner and have taken quick action which should be appreciated.

5. In the facts and circumstances of the case, the following factual aspects have remained undisputed :-

[i] The petitioner was lastly released on bail on 12th December 1998.

[ii] Statements of witnesses were recorded on 29th, 30th and 31st of January 1999.

[iii] Proposal for detention was made on 6th of February 1999.

[iv] The detention order came to be passed on 6th of February 1999.

5. In case of Kalidas Chandubhai [supra], it was held that the detaining authority must have sufficient time to examine the possibility of exercising of power u/s 9[2] of the PASA Act. In that case, the proposal was made on 16/10/1992 and the order was passed by detaining authority on 17/10/1992 which was held by Division Bench to be a wrong exercise of power u/s 9[2] of the PASA Act which affected right of detenu of making effective representation under Article 22[5] of Constitution of India.

6. It is difficult to appreciate how the authority could have verified the statements and come to the conclusion that it is necessary to claim privilege u/s 9[2] of the PASA Act on the very same day when the proposal is made and the order is passed. In light of the above cited decision, the order recording subjective satisfaction would stand vitiated. The petition, therefore, deserves to be allowed on this ground alone. The other grounds are not pressed by Mrs. Patel.

7. In this view of the matter, the petition is allowed. The impugned order of detention passed by the Commissioner of Police, Vadodara city dated 6/2/1999 in respect of the petitioner Pravin Manubhai Jayswal, is hereby set aside with no orders as to costs. The petitioner be set at liberty forthwith, if not required to be detained in custody for any other case. Rule is made absolute accordingly.

[ A.L.DAVE, J. ]

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